



CITY OF RYE, NEW YORK  
**FINANCE COMMITTEE MEETING NOTES**

June 7, 2004 – 7:30 p.m. – Employees' Lounge, City Hall

Present: Finance Committee Members Jono Peters (Chair), Michael Caponiti, Norm MacMaster, David M. Mullane, George Pratt, and Sal Samperi; City Council liaison Franklin Chu; and City Staff liaisons Michael Genito (Comptroller) and Mary Lou McClure (Deputy Comptroller).

Guests: Mayor Steve Otis

Absent: Fred Dunn

Review of Financial Policies

Sal Samperi reported that the financial policies were reviewed a couple of years ago and that they serve to establish standards for the City Council in making financial decisions. In that earlier review, the Finance Committee determined that in general, surplus operating funds should be retained first to maintain a healthy fund balance and then to fund capital items. However, the Committee also determined that it might be necessary to relax this policy at times to address unusual or extenuating circumstances. Sal noted that a sub-committee consisting of himself, David Mullane and Norm MacMaster was charged to research the City's debt policy and to recommend appropriate changes.

Sal then presented a memo dated June 2, 2004 from the sub-committee to the Finance Committee (copy attached), noting that the current Charter debt limits that would trigger a permissive or mandatory referendum have served the City well in providing good conservative policy. Sal explained the current limits, and the exceptions to those limits, and advised that the sub-committee had determined that there should be some additional exceptions. More specifically, there should be an exception for debt issued to fund:

- The cost of public improvements where the total cost of those improvements is paid for by special assessments against the benefited properties;
- The cost of capital items for public safety (police, fire, building safety, etc.) where the need is urgent and prudent, with a maximum annual aggregate limit of \$1,000,000 for all such purposes; and,
- The cost of public improvements necessary to comply with mandated federal, state or county laws where failure to comply would result in fines, penalties, or other charges against the city.

Sal noted that the sub-committee had considered another exception, namely for bonds issued to fund public improvements where 50% of the cost was reimbursed by other non-city sources (federal and state aid, grants, etc.). The sub-committee did not strongly support such an exception as it could possibly lead to the consideration of issuing debt based not on need or benefit, but on the attractiveness of outside funding. The sub-committee and full Finance Committee agreed that this exception should not be recommended.

Discussion ensued on the other recommended changes, with the Committee in agreement that they were generally worthy of presentation to the City Council. George Pratt expressed some

concern that the language used for the special assessment exception be clear to mean benefited properties other than city-owned property, as it might be interpreted by members of our enterprise funds (Golf Club and Boat Basin) that the enterprise funds could force the City to incur debt if their membership voted to be “assessed” for the costs. Michael Genito noted that any and all debt must be approved by City Council resolution, but would present the question to the City’s bond counsel. Jono Peters and Norm MacMaster wanted clarification of the term “public safety” to ensure that it would only be used for necessary items of an urgent need. Norm also emphasized that the \$1,000,000 annual cap was set to discourage a City Council from circumventing the debt limits by authorizing bonds of \$1,000,000 or less for several projects, the total of which would exceed \$1,000,000 in a single fiscal year. David Mullane expressed concern that someone could still circumvent the process by authorizing up to \$1 million per year for several years, ultimately accumulating several million dollars for a single project. Michael Genito responded that the timing necessary to undertake major projects, combined with annual project cost escalations, and the fact that the City Council would exhaust its annual flexibility would make such a practice prohibitive. The discussion concerning the mandates focused on ensuring that the compliance was necessary to avoid fines or penalties, not just merely to comply with mandates that might not have any immediate financial consequences.

Based on the discussion the Finance Committee requested Michael Genito to contact the City’s bond counsel to obtain the appropriate language for the recommended changes.

#### Communications Related to City Debt Matters

Sal presented the sub-committee’s findings on their research into the question of who should communicate with credit rating agencies, bond counsel, financial advisors, and others involved in the City’s debt.

Michael Genito noted and the Committee agreed that communications with credit rating agencies involving City business are particularly sensitive, and that the City Comptroller’s office should be the sole party to such communications, unless the City Comptroller advises that others should be present.

Michael Genito noted that it is often very productive and informative for members of the City Council, Finance Committee, and others to participate in discussions with other parties typically involved in the City’s finances (bond counsel, financial advisors, bankers, auditors, etc.), *provided that* such communications are scheduled, coordinated, attended and led by the City Comptroller and/or his/her designee. Prior to the discussion the City Comptroller would review with other City participants the purpose of the discussion, the protocols to follow, and advice on what issues should be raised and/or how City participants should respond to anticipated questions. The purpose of this briefing would help to ensure that matters are not raised or discussed in a manner that may cause concern to non-City participants.

Mayor Otis and George Pratt concurred that it is a common and highly recommended practice that only the City Comptroller should deal with credit analysts. They both also commented that the City Comptroller, City Manager, and/or Corporation Counsel should be present in communications with others involving City debt.

After much discussion, the Finance Committee determined that it is appropriate to include in our debt policy, and not as any change to our City Charter, a statement that the City Comptroller and/or his/her designee is the official contact of the City for any matters involving the City’s debt or credit, and that communications with credit rating agencies, bond counsel, financial advisors, banks and others involving official business of the City should be authorized by and coordinated through the City Comptroller’s office.

### Other Financial Policies

The Committee agreed that a sub-committee consisting of Norm MacMaster, David Mullane, and Michael Caponiti would review the remaining financial policies. Michael Genito noted that the Cash Management and Investment Policy was created in accordance with New York State guidelines, and any changes other than bank and institution names would require a notice to be sent to the State Comptroller from the City's Corporation Counsel outlining the changes and the opinion of Corporation Counsel that the policy remains consistent with the intent of the New York State model policy. Finance Committee members are encouraged to review the financial policies and to forward any questions or comments to the sub-committee and Michael Genito.

Michael Genito noted that the final version of the updated financial policies should be forwarded to the City Council for review and acceptance with the submission of the tentative 2005 budget on or before November 7, 2004.

### Forecast Assumptions

The Committee agreed to review the forecast assumptions used in the 2004-2006 Financial Forecast and to forward any comments or questions to Michael Genito for use in preparation of the 2005-2007 Financial Forecast.

### Acknowledgements

The Committee expressed their appreciation for the work performed by Sal Samperi, Norm MacMaster, and David Mullane as the sub-committee on Charter debt limits. The Committee also expressed their appreciation to Michael Genito, Mary Lou McClure, and the City's Finance Department for their assistance to the sub-committee and Finance Committee.

### Next Finance Committee Meeting

The next meeting of the Finance Committee will be held on Monday, July 12, 2004 at 7:30 p.m. in the Employees' Lounge, lower level of City Hall.

### Adjournment

Having no further business, the meeting adjourned at 9:15 p.m.

Respectfully submitted,

Michael A. Genito

# MEMORANDUM

To: City of Rye Finance Committee

From: Norm MacMaster  
David Mullane  
Sal Samperi

Date: June 2, 2004

Re: **City of Rye Financial Policies; Charter Bond Limitations  
Analysis**

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Jono Peters, Chairman, Finance Committee, asked us to review the City's Financial Policies and report back to the Committee with an agenda of suggested changes, if any, for further discussion. This memorandum summarizes our findings relating to our first area of inquiry, the City's Charter bond limitations.

## **History**

The City Comptroller, Michael Genito, previously analyzed the City's Charter bond limitations in 2002. A review was made of the charter limitations on bond resolutions of 19 New York State cities, including Rye. Excluding Rye, the charters of the remaining 18 cities revealed that 14 had no charter bonding limits and four had charter bonding limits that were significantly less onerous than Rye's.

Michael's conclusion, confirmed by outside bond counsel Thomas Rothman, Esq. of Willkie Farr & Gallagher, was that the City's charter bond limitations were archaic. Objections were made on both technical and philosophical grounds. From a technical perspective, the language of the charter provisions was obtuse and difficult to understand. In addition, charter limits made reference to moving financial benchmarks such as Rye's average gross annual budgets for the preceding three years. Finally, the application of the charter bond limitations to current proposed initiatives required an understanding of historical aggregate funding amounts from previous bond issuances.

Philosophical objections were also raised. Critics of the charter bond limitations argued that since Rye's government representatives are elected to serve in the citizens' best interests, citizens should rely on their elected representatives to exercise discretionary good judgment and sound fiscal practices. Critics argued that if elected representatives do not do so, they would be elected out of office (albeit, at what financial loss to the City). Note that if the charter bond limitations were not in place, New York State law would allow the City Council to approve, without referendum, any and all debt of the City.

## **Legal Debt Limits**

The City of Rye Charter (“Charter”) section C21-9 outlines when bond referenda are required, recommended, and not required. The following is a summary of the Charter’s applicable provisions (in plain English), with the most recently available historical funding amount figures added where applicable.

**Mandatory Referendum Required:** A mandatory referendum is required for any proposed bond issuance in excess of 10% of Rye’s average gross annual budget for the proceeding three years ("AGAB").

Application: Since the AGAB is currently \$26,838,365 any proposed bond issuance in excess of \$2,683,837 is subject to a mandatory referendum.

**Permissive Referendum Required:** A permissive referendum<sup>1</sup> is required for any proposed bond issuance in excess of 5% (\$1,341,918) but less than 10% (\$2,683,837) of the AGAB. To determine the current Permissive Referendum threshold amounts, subtract from the greater than 5% but less than 10% AGAB calculation the outstanding amount of all previous bonds issued under permissive referenda, currently \$2,281,105.

Application: The City Council can currently adopt a resolution for the issuance of bonds totaling \$402,732 (\$2,683,837 - \$2,281,105) subject to a permissive referendum.

**City Council Vote:** Only a City Council vote is required for a proposed bond issuance of less than 5% (\$1,341,918) of AGAB. To determine the current City Council vote threshold amount subtract from the 5% AGAB calculation the outstanding amount of all previous bonds issued pursuant to City Council Votes, currently \$802,860.

Application: The City Council can currently adopt a resolution for the issuance of bonds totaling \$539,058 solely by a City Council Vote.

**Exceptions to the Law’s Application:** There are various exceptions to the above law which do not require that a referendum be held if bond proceeds are used for the payment of various legal, administrative and quasi-judicial judgments against the City, or for obligations sold to New York State Environmental Facilities Corporation.

The following summarizes the current Charter limits, assuming no exceptions to the Charter are applicable:

- **Up to \$539,058, may be bonded by City Council vote alone.**
- Up to \$402,732 may be bonded by City Council vote subject to permissive referendum.
- Amounts greater than \$941,790 require a mandatory referendum <sup>2</sup>.

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<sup>1</sup> A permissive referendum gives registered voters the ability to challenge an action by the City Council (such as a resolution to issue bonds). In accordance with §C5-4 of the City Charter, if at least 10% of the registered voters sign a petition to require a referendum on the matter and submit it to the City Council within 45 days of the resolution date, a referendum must be held for the voters to approve the City Council’s action. If the referendum fails (i.e. the voters do not approve the City Council’s action), then the action cannot be taken (e.g. the City could not issue bonds).

<sup>2</sup> Note that a total bonded debt of \$941,790 could currently be approved without a mandatory referendum by use of a permissive referendum in the amount of \$402,732 and a City Council

### **Analysis**

The key limiting factors in the Charter are the percentage of AGAB and the requirement that aggregate funding amounts be considered. If aggregate funding amounts were to increase from existing levels, a situation could arise where even relatively minor purchases (e.g. the purchase of a new fire truck) could be challenged by a permissive referendum. In addition, it could be argued that the threshold amount below that which the City Council could act without being subject to the Charter (i.e. \$539,058) is too low.

### **Recommendations**

As stated above, Rye is one of the few cities in the State of New York that limits the authority of its local governing officials (i.e., our City Council) to issue debt that it believes is in the best interests of the community. Nonetheless, while the Charter provisions on bond limits are admittedly difficult to interpret, we believe they play an important role in governing financial conduct and should not be eliminated.

We do, however, recommend that various exceptions be added to the Charter to provide the City Council with the authority to respond on a timely basis to small, practical, and other “common sense” funding requests without the expense and delay of the referendum process. In fact, several other municipalities have authorized exceptions that allow their respective local governments to satisfy funding requests of the types described above.

We recommend that the following bonded debt be excluded from the referendum requirements of the Charter if approved by the City Council:

1. Public improvements where all costs are recovered by special assessments on the benefited properties. For example, a referendum would not be required if the debt service on bonds issued to install a sewer was repaid in full by special assessments against the benefited properties.
2. Public safety improvements (e.g. fire, police, ambulance, building inspection) subject to a \$1,000,000 aggregate annual maximum cap.
3. Funding to comply with mandated federal, state or county laws.
4. [To be discussed by the full Finance Committee:] Public improvements with a minimum 50% of matching federal, state or other outside funding to pay for the cost of such improvements.

### **Communication Relating to City’s Debt Matters**

On a separate but related matter, we would like to discuss with the full Finance Committee the degree of authority that the City Comptroller should have when communicating in all

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vote in the amount of \$539,048. If subsequent bond resolutions depleted these thresholds, a mandatory referendum would be required for bonding any amount that was not the subject of a Charter exception.

official matters involving City debt. The current language in the Charter regarding this matter is provided below.

**§C10-2 (A)** “The City Comptroller shall have charge of the administration of the fiscal affairs of the City pursuant to law and the provisions of this Charter”.

**§C10-2 (J)** “He [the City Comptroller] shall have custody of bonds and notes...of the city or in possession of the city in a fiduciary capacity, except as otherwise provided by law...”

We suggest that the Finance Committee consider the following scenarios:

1. The Charter language is accepted as is, i.e. the City Comptroller is the City’s representative in all official matters involving City debt.

Rationale: Consider the following analogy: The City Comptroller is to the City Council as a Chief Financial Officer of a company is to the company’s Board of Directors. Just as a CFO serves at the discretion of the Board, the City Comptroller serves at the discretion of the City Council. If either does not do his/her job properly, they are replaced. Until that time, the assumption is that they are doing their job properly.

2. The Charter language is modified to allow for any City Council member to serve as the City’s representative in all official matters involving City debt—other than communication with rating agencies and/or bond counsel.

Rationale: The rationale for this change is that the City Council, i.e. the City’s elected officials, should not be precluded from dealing with any matter relating to the City’s financial well-being. The exception for communications with rating agencies and bond counsel was added given the heightened sensitivity of these communications.

3. The Charter language is modified to ensure that the City Comptroller is a party to all conversations involving City debt.

Rationale: This proposal is a compromise between the two above scenarios. Under this scenario, no member of the City Council is disenfranchised from discussions involving the City’s debt. At the same time, recognizing that perhaps in some instances a City Council member’s desire to get involved in complex financial matters may not be commensurate with his/her skill in such financial matters, the City Comptroller is a party to all discussions and can ensure that the City’s financial position is represented accurately at all times.

Respectfully submitted,

David Mullane, Sal Samperi, and Norm MacMaster